

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 899 of 1997

in

SPECIAL CIVIL APPLICATION No 10754 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

SHREE SANSKAR TRUST

Versus

DISTRICT PRIMARY EDUCATION OFFICER

Appearance:

MR PJ KANABAR for Appellant
MR BR KYADA for Respondent No. 1
MR MD RANA for Respondent No. 2

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

Date of decision: 18/04/98

ORAL JUDGEMENT

1. Admitted. Mr. B.R. Kyada, learned Advocate appears and waives service of notice of admission on behalf of respondent No.1 and Mr. M.D. Rana, learned Advocate appears and waives service on behalf of respondent No.2. With the consent of parties, the matter is taken up today for final hearing.

2. This appeal arises out of an order passed by the learned Single Judge in Special Civil Application No.10754 of 1996 on 20th June, 1997, refusing interim relief to the appellant-petitioner.

3. Respondent No.2 was employed by the appellant as a teacher in 1990 and, according to respondent No.2, her services were terminated on 13th July, 1993, without following due procedure. She, therefore, approached the Gujarat Primary Education Tribunal challenging that termination vide Application No.256 of 1993. The Tribunal, after considering the cases put forward by the parties, directed the appellant to fix the salary of respondent No.2 according to rule and pay the same from the date of appointment till she is reinstated as per the direction of the Tribunal. Against this, the appellant approached this Court by preferring Special Civil Application No.10754 of 1996 and also sought interim relief against the implementation of the order. That interim relief was refused by the impugned order and, hence, this appeal.

4. Mr. Kanabar, learned Advocate appearing for the appellant, has raised following contentions:-

- (1) that the order of learned Single Judge is not a speaking order;
- (2) that the appointment of respondent No.2 was not as per Schedule-F of the Act and, therefore, she was not entitled to salary as per Rules;
- (3) that the financial condition of the institution, as emerging from the pleadings, has also not been taken into consideration and, therefore, the order of the Tribunal ought to have been stayed by the learned Single Judge;
- (4) though the alleged termination was from 13.7.1993, the Tribunal directed the appellant to pay the salaries from the date of appointment; and
- (5) that the Tribunal and the learned Single Judge

have not considered that there was no termination, but it was a case of abandonment of service.

5. Mr. Rana, on the other hand, submitted that the main ground for preferring Special Civil Application was that the order of the Tribunal was ex-parte, which is not true, as can be seen from the order of the Tribunal itself. It is also contended by Mr. Rana that the appellant had never raised the issue about the appointment of respondent No.2 not being under Schedule-F till it was contended for the first time very vaguely in the petition. Despite the direction, Mr. Rana contended, for fixation of pay and payment, the appellant has not fixed the pay and is not paying the salary as per rules. Respondent No.2 is being paid a fixed salary of Rs.700/- only after a delayed reinstatement. Under the circumstances, he has urged that the appeal may not be entertained.

6. Mr. Kyada appearing for the District Primary Education Officer has contended that the stand of the Government from beginning was that the appointment was not under Schedule-F. He, however, urged that since the main petition is pending before the learned Single Judge, interest of students as well as the trust may be taken into consideration.

7. Considering the fact that the Tribunal has passed an award for salary from the date of appointment, i.e. with retrospective effect, although the alleged termination is from 13th July, 1993 and keeping in mind the fact that the trust is facing economic crisis and is not accepting any donation, etc., and also keeping in mind that a dispute is raised about the appointment being not given as per Schedule-F, and that the main petition is still to be finally decided on merits, without entering into the merits of the case and without observing anything on larger questions in the matter, we are of the view that ends of justice would be met, if the order of the learned Single Judge is modified to the extent that, instead of total refusal of stay of the order of the Tribunal, it is directed that the arrears of salary payable as per the direction of the Tribunal would be computed from the date of termination i.e. from 13th July, 1993. This payment would be subject to the final outcome of the petition.

8. With the above direction, this appeal is disposed of. No costs.

(C.K. THAKKAR, J.)

(A.L. DAVE, J.)

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